



WORKER RIGHTS CONSORTIUM

Dear Friends and Colleagues:

I write to share additional information and analysis concerning the landmark agreements just announced to combat gender-based workplace violence and harassment at garment factories in Lesotho. As the WRC outlined in our prior communication, these binding agreements among major apparel brands, one of their key suppliers, and a coalition of unions and women's rights advocates represent the first enforceable instrument to protect workers from sexual harassment in the contract factories of global apparel brands. In this communication, we explain the roles of the organizations that contributed to this breakthrough; contrast the new binding agreements and the program they will create with voluntary industry labor codes that consistently fail to protect workers; and provide comment on several key aspects of the agreement and their significance.

Organizations that Have Led the Way

The agreements would not have come about without years of courageous organizing by the three unions representing garment workers at the supplier, Nien Hsing Textile. The Independent Democratic Union of Lesotho (IDUL), the United Textile Employees (UNITE), and the National Clothing Textile and Allied Workers Union (NACTWU) managed to survive and build membership – despite retaliatory firings of union activists, threats to fire the entire workforce if the unions persisted in their organizing, discrimination against union members (including denial of the opportunity to earn overtime pay), denial of the right of members to be represented by the union in disciplinary proceedings, and other violations of associational rights. Management's refusal to respect workers' right to collective action was a central contributor to the culture of impunity that allowed sexual harassment and coercion in the factories to persist: had workers been free to organize, the unions would have been a powerful check on managerial abuse. Given the conditions, the unions had to fight just to survive. Had they not persevered across years of hostility and reprisals, it is likely the gender-based violence and harassment at these factories would never have been exposed. Instead, the unions survived, helped the WRC document and expose the

reality in the factories, and then represented workers ably in the negotiations that followed with the brands and the employer.

Equally important in achieving these agreements were the Federation of Women Lawyers in Lesotho (FIDA) and Women and Law in Southern African Research and Education Trust-Lesotho (WLSA), the country's leading women's rights advocates. WILSA and FIDA have been fighting gender-based violence in Lesotho for three decades, achieving concrete progress via political and legislative advocacy (including passage of the national Sexual Offences Act of 2003 and the Child Protection and Welfare Act of 2011), while also providing vital counseling and legal support to victims. WILSA and FIDA joined with the three unions to battle workplace harassment and abuse at the factories and to negotiate with the brands and Nien Hsing. Their insights were indispensable in the design of the anti-sexual harassment program the new agreements will create. And they spoke with unfailing eloquence and power on behalf of women workers throughout the negotiations.

The coalition of unions and feminist organizations at heart of this effort was integral to its success. As discussed below, having led the effort to secure these ground-breaking agreements, the unions and women's organizations will now lead the effort to implement them.

The WRC is proud to have contributed to this breakthrough. It was clear from the early days of our investigation at Nien Hsing's Lesotho factories that the abuses women workers were facing were both egregious and extensive – and that nothing short of a comprehensive program to combat these abuses, backed by enforceable contracts with brands and the employer, could change the culture of these workplaces. We recommended to the unions and women's organizations that they join forces and pursue such agreements. We conveyed our findings to the brands and pressed them to agree to enter negotiations. We worked with the Lesotho leaders, and with the US organizations whose roles are outlined below, to design the program that these new agreements will put place – with particular emphasis on governance structures and enforcement provisions, for which we drew on our experience helping to create the Accord on Fire and Building Safety in Bangladesh. We worked with all of the parties through nine months of negotiations to help secure strong agreements and we will now support all of the parties as implementation begins.

Along with the WRC, two other US organizations worked side-by-side with the Lesotho leaders in the negotiation process and made contributions pivotal to their successful outcome. The Solidarity Center, now the largest US-based organization working on labor rights globally, has a long history of partnering with unions in Lesotho and across

southern Africa and deep experience and knowledge on the issue of gender-based violence in global manufacturing supply chains. The Solidarity Center's technical expertise, and its passionate advocacy for worker empowerment as the only viable means to combat gender-based violence in the workplace, were critical factors in the negotiation. Workers United, which represents workers in the apparel industry in the US, has a collective bargaining relationship with Levi Strauss & Company, brought decades of negotiating experience to the table with the three brands and to subsequent negotiations with Nien Hsing. Workers' United was a catalyst of the rejuvenated anti-sweatshop movement that emerged in the US in the late 1990s and the vital support the union has provided the Lesotho leaders continues a long tradition of international solidarity.

The worker side of the negotiation thus reflected an extraordinarily strong international labor coalition – the kind of South-North alliance that, in the context of contemporary supply chains, is a *sine qua non* for effective engagement with global corporations. The Solidarity Center will now take the lead in supporting the Lesotho organizations on program implementation, a role its intellectual resources and regional experience make it uniquely capable of playing.

There is another group of organizations in the US whose work was foundational to this breakthrough – the Coalition of Immokalee Workers (CIW), the Fair Food Standards Council (FFSC) and the Worker-driven Social Responsibility Network (WSR-N). CIW's [Fair Food Program](#) (FFP) is built on binding labor rights agreements among major food brands, agricultural producers, and CIW – a worker-based human rights group that has been organizing, and advocating on behalf of, migrant agricultural workers in the US since 1993. The FFP's [astonishing success](#) in combating sexual harassment in Florida's tomato fields – where abuses were widespread, severe and deeply ingrained – is one of the most inspiring labor rights success stories of this decade. The program the Lesotho agreements will create is modeled after the FFP's approach to combating sexual harassment and the program will feature an independent complaint body similar to the Fair Food Standards Council, which investigates complaints under the FFP.

In addition to providing a real-world example of how gender-based workplace violence can be eradicated in even the most challenging labor rights environments, CIW and the FFSC provided practical and strategic guidance to the Lesotho leaders during the negotiation process. They were aided, in this regard, by the WSR-N, a network of worker organizations and labor rights advocates that promotes and supports efforts to establish enforceable agreements between global brands and worker representatives – like the FFP, the Accord on Fire and Building Safety in Bangladesh, and these new

agreements. The WSR-N facilitated a trip for the Lesotho leaders, early in the negotiation process, to meet with CIW and with WRC, the Solidarity Center, and Workers United. The Lesotho leaders view these meetings as an key juncture on their path. As the Lesotho organizations begin implementation of the agreements, CIW and the FFSC will be an important part of the implementation team, providing practical experience with key aspects of the program that is unavailable from any other source.

Why Enforceable Agreements Are Essential

The sexual harassment and coercion that the WRC documented at the Nien Hsing factories was especially severe, but the problem is by no means unique Nien Hsing or to the supply chains of those brands that buy from Nien Hsing. On the contrary, it is a problem [across the global garment industry](#). Gender-based violence and harassment thrive in workplaces where the imbalance of power between workers and managers is especially severe. Given the desperate need for employment of most garment workers and the absence of alternatives, the rampant non-enforcement of worker rights protections by governments in apparel exporting countries, and the massive obstacles to unionization, the power imbalance in garment factories is, in many cases, both extreme and entrenched. This is an environment ripe for abuse, including gender-based abuse.

It is crucial, in this regard, that the definition of gender-based workplace violence and harassment incorporated into the agreements is drawn from the robust definition now memorialized in the new [ILO Convention Concerning the Elimination of Violence and Harassment in the World of Work](#). The broad scope of this definition – encompassing all forms of harassment, coercion and violence that occur at, or are related to, the workplace – is crucial to ensuring strong protection for workers.

It is important to bear in mind that sexual harassment and coercion in the garment industry persist, even though every major apparel brand has a code of conduct that prohibits such abuse and a “social auditing” system that supposedly enforces that code. This is true of the brands sourcing from Nien Hsing, as it is true of all of their competitors. Why do these codes and monitoring systems fail to protect workers? Aside from the obvious fact that the top priority for all brands and retailers is getting clothing cheap and fast, not upholding labor standards, there are two key factors: the voluntary nature of the brands’ labor rights commitments and the weaknesses of social audits as a tool for uncovering labor rights violations. In the global history of labor rights enforcement, it is devilishly difficult to find examples of corporations effectively regulating themselves – for a simple reason: self-regulation doesn’t work and never has. The labor codes of global brands, as they apply to their supply chains, are a classic

example of self-regulation. They are a set of voluntary commitments, unenforceable by anyone who represents the interests of workers. They have produced the results one would expect of unenforceable promises and have therefore done much more to protect the image of brands, who use the existence of these codes to claim that they are socially responsible, than to protect the well-being of workers.

Secondly, the brands' auditing systems are methodologically weak. For example, the brand auditors talk to workers *inside the factory*, with full awareness on the part of management of which workers are being interviewed. If you *don't* want to find out what's really going on in a workplace, this is a highly effective way to accomplish that purpose. Workers' are reluctant to tell investigators about sexual harassment and coercion to begin with – interviewing them inside the factory magnifies that reluctance. When the employer pressures workers not to speak candidly to auditors, a dynamic present in many factories, including at Nien Hsing, the barriers get even higher. It is therefore unsurprising that auditors working for Nien Hsing's customers repeatedly failed to detect the abuses the WRC's investigators uncovered at the factories in Lesotho.

In contrast, under the new agreements, the brands' commitment to protect workers from sexual harassment and coercion are binding. They are contractually enforceable, via binding arbitration, by the unions, the women's organizations, and the WRC. If Nien Hsing breaches its commitments, the brands are legally obligated to reduce orders to a degree sufficient to convince Nien Hsing to comply. And under the program the agreements will create, the investigators charged with addressing worker complaints will not use the interview methods of industry auditors. They will talk to workers where workers are comfortable talking: offsite, in places where workers feel safe. Workers comfort level will be reinforced by powerful anti-retaliation provisions written into the agreements.

There is another component of the complaint mechanism that is vitally important: workers will have the ability to bring complaints to an outside body that is entirely independent of management and that has the power to protect workers and punish perpetrators, whether or not this is what management wants. This Office for the Prevention of Gender-Based Violence is empowered to investigate alleged abuses, reach findings, and direct factory management to impose penalties on offenders, up to and including firing them. The complaint intake process will be run by FIDA and WLSA, the Lesotho women's rights advocates. Having the ability to bring a complaint to an independent party whose sole purpose is to protect their rights, rather than an internal human resources department that has historically failed to do so, will fundamentally alter the circumstances of workers and the power balance within the workplace.

Another vital provision of the agreements: they protect workers, and the unions, against any form of anti-union retaliation and interference. As discussed above, if workers at the Nien Hsing factories had been able to exercise their right to unionize without retaliation in past years, and if the unions had been able to exercise their right to represent their members, it is likely that workers would have succeeded, through their own collective action, in diminishing the severity and the extent of sexual harassment and coercion at the factories. The three unions have recently secured memoranda of understanding with Nien Hsing that protect their right to access the factories and represent members. The new agreements broaden these protections, an element that the unions and women's groups deemed essential in the negotiations with the brands and Nien Hsing, because the agreements cannot be implemented without the leadership of the unions. The *combination* of the independent complaint mechanism *and* robust advocacy by the unions for their members will provide powerful protection for workers.

We believe that binding agreements, enforced by an external complaint mechanism that is empowered to hold the employer accountable, and in which workers' and feminist organizations play a central role, will prove highly effective at eradicating gender-based violence and harassment at Nien Hsing.

The Worker-driven Social Responsibility (WSR) Model

Our optimism about the effectiveness of this approach derives from the success of the Fair Food Program. It also derives from the success of the Bangladesh Accord, a set of agreements focused on building safety, which has transformed Bangladesh's massive garment industry and radically reduced safety risks for more than two million garment workers. As on the issue of sexual harassment, virtually all of the apparel brands sourcing from Bangladesh had code of conduct provisions protecting worker safety. These voluntary codes, and the auditing programs that were supposed to enforce them, failed abjectly to protect workers, who died by the dozens and hundreds in fires and building collapses in grossly unsafe buildings – culminating in the 2014 Rana Plaza building collapse, the worst factory disaster in world history. The binding agreements that created the Accord – between apparel brands, Bangladeshi unions, and the global union federations IndustriALL and UNI – succeeded where voluntary industry codes had failed.

It is the success of enforceable agreements between global brands and worker representatives, an approach increasingly known as worker-driven social responsibility (WSR), in contrast to the failure of voluntary industry labor codes, that led to the

formation of the WSR Network. The WSR-N – founded by CIW, the Clean Clothes Campaign, Vermont’s Migrant Justice, the Bangladesh Center for Worker Solidarity and other organizations – exists to advance the WSR model. Along with the FFSC, the WRC serves as technical advisor to this network, which is working to convene and strengthen an array of organizations united by their commitment to replacing voluntary industry labor codes with enforceable worker-corporate agreements. The Lesotho agreements to combat gender-based violence are an example of how the cross-fertilization the WSR-N has made possible, and the technical support it provides, are accelerating the expansion of the WSR model. Other examples are the recently created Milk with Dignity program in Vermont, involving an enforceable labor rights agreement between Ben and Jerry’s and the organization Migrant Justice; the effort by Centro de Trabajadores Unidos en La Lucha (CTUL) to create the Building and Dignity Standards Council in Minneapolis; and the RESPECT program, led by the Model Alliance, which seeks enforceable agreements with fashion brands, like Victoria’s Secret, to protect fashion models – who, despite working at the opposite end of garment supply chains, face abuses similar to those suffered by garment workers.

Implementation

One of the essential features of these agreements is the central role the Lesotho unions and women’s rights advocates will play in running the program the agreements will create. An example is the program’s sweeping worker training regime, which will involve several hundred, multi-day small-group training sessions. The training will be led by UNITE, NACTWU and IDUL, in conjunction with the women’s groups, and will be carried out by trainers directly employed by the unions. The agreements obligate Nien Hsing to provide all necessary access to the factories for the organizations to carry out this work. Another example: FIDA and WILSA will house the counseling and complaint intake function of the program, including the confidential hotline that will be available to all workers. With their long experience providing counsel to, and advocating for, women who have faced gender-based violence, these organizations are extraordinarily well-positioned to play this vital role. The unions and women’s groups will also elect representatives to the the Steering Committee of the independent body that will investigate complaints and determine punishments for perpetrators of harassment and abuse. (The brands will elect representatives with voting power equal to the unions and women’s groups – a structure similar to that of the Steering Committee of the Bangladesh Accord. A neutral voting chairperson will be chosen by all parties. The WRC and Nien Hsing will both have non-voting observer status on the Committee.)

In their work to implement the program, the union and women’s organizations will have the support of the Solidarity Center, which has unparalleled experience helping to

establish and operate labor rights programs in dozens of countries across the globe. The Solidarity Center will assist the Lesotho groups with a wide range of endeavors – from setting up the independent body administratively, to developing the training curriculum, to hammering out the details of the complaint investigation process. The Lesotho groups and the Solidarity Center will draw substantially on the experience and expertise of the Workers United and the WRC, as well as the FFSC and CIW.

Setting a Precedent

If the sole effect of the agreements is to end the culture of sexual harassment and coercion in the five Nien Hsing Lesotho factories, and protect the 10,000 workers who toil daily within them, this will be an enormously valuable undertaking. We believe that the agreements, in addition to their vital role at the Nien Hsing factories, represent a major precedent: the first application of the model of enforceable union-brand agreements to the global problem of gender-based workplace violence in the global apparel industry. It is a precedent that we hope worker organizations and women's rights group, in Lesotho and in many places beyond, can build on.